

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
APPELLANT
vs.**

**J.D.L.C.,
RESPONDENT**

DOCKET NUMBER WD70769

DATE: SEPTEMBER 1, 2009

Appeal from:

Cole County Circuit Court
The Honorable Thomas L. Sodergren, Judge

Appellate Judges:

Division Two: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Attorneys:

Steven M. Kretzer, for Appellant

Melinda K. Pendergraph, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI, APPELLANT

v.

J.D.L.C., RESPONDENT

WD70769

Cole County, Missouri

Before Division Two Judges: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

The State of Missouri appeals the judgment of the trial court granting J.D.L.C.'s motion to suppress a breathalyzer sample. The State had charged J.D.L.C. (hereinafter "Minor") with misdemeanor minor in possession of intoxicating liquor for, as a person under the age of twenty-one years, having a detectable blood alcohol content of more than two-hundredths of one percent or more by weight. The State argues that the trial court clearly erred in finding that the arresting officer lacked probable cause to arrest.

AFFIRMED.

Division Two holds:

Where Minor did not own or drive the truck; he was sitting in the back seat, and the alcohol was found in the bed and front seat; he had only had a "faint to "mild" odor of alcohol on his breath and displayed no visible signs of intoxication; his eyes were not glassy or blood-shot; and he was not belligerent, the law enforcement officer did not have probable cause to arrest Minor for minor in possession. Because the breathalyzer sample was so closely tied with the illegal arrest, it cannot be purged of the primary taint, and the trial court did not clearly err in granting Minor's motion to suppress it.

Opinion by: Victor C. Howard, Presiding Judge

Date: September 1, 2009

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